

Message Text

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42

ACTION EUR-12

INFO OCT-01 ISO-00 OPIC-03 XMB-02 EB-07 OMB-01 COME-00

TRSE-00 FRB-03 CIAE-00 DODE-00 PM-03 H-02 INR-07 L-02

NSAE-00 NSC-05 PA-01 PRS-01 SP-02 SS-15 USIA-06 STR-04

CIEP-01 CEA-01 /079 W

----- 013224

R 221041Z MAY 75

FM AMEMBASSY LISBON

TO SECSTATE WASHDC 2856

INFO AMEMBASSY BONN

USMISSION EC BRUSSELS

AMEMBASSY LONDON

AMEMBASSY MADRID

AMEMBASSY PARIS

USMISSION OECD PARIS

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E.O. 11652: N/A

TAGS: ECON, PO

SUBJ: INCREASED POWERS UNDER INTERVENTION LAWS

REF: (A) LISBON 4604 OF OCTOBER 24, 1974 NOTAL;

(B) LISBON 5266 OF DECEMBER 2, 1974 NOTAL

SUMMARY: NEW DECREE GREATLY INCREASES GOVERNMENT POWERS OVER INTERVENED COMPANIES AND ASSOCIATED PERSONS; DEBTS ARE SUSPENDED, AND BOTH BANKRUPTCY AND PAYMENT OF DIVIDENDS PROHIBITED. PERSONAL PROPERTY OF PERSONS LINKED WITH FIRM SUBJECT TO SEIZURE. DECREE HAS EX POST FACTO PROVISIONS, APPEARS NEGATE CONCEPT OF LIMITED LIABILITY COMPANY, AND WILL FURTHER DECREASE BUSINESS CONFIDENCE. END SUMMARY.

1. DECREE-LAW 22-B/75 DATED MAY 12 GREATLY INCREASES GOVERNMENT POWERS VIS-A-VIS COMPANIES "ASSISTED" OR INTERVENED UNDER LIMITED OFFICIAL USE

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DECREES 540-A/74 AND 660/74 (REFTELS). INCREASED POWERS ARE TO

PROTECT GOVERNMENTS INTERESTS AND INSURE THAT ASSISTANCE IS EFFECTIVE. MAJOR PROVISIONS:

A. INTERVENED COMPANIES CANNOT BE SUED FOR DEBTS CONTRACTED PRIOR TO INTERVENTION, UNTIL INTERVENTION ENDED OR FIRM NATIONALIZED. ALL JUDGMENTS AWARDED AFTER INTERVENTION ARE NULL AND VOID, AND BRINGING SUIT WILL CAUSE SUSPENSION OF TERMS OF DEBT. ALL BILLS AND DRAFTS WILL REMAIN VALID BEYOND MATURITY.

B. WITHOUT COUNCIL OF MINISTERS APPROVAL, INTERVENED FIRM OR INDIVIDUAL OWNERS CANNOT BE DECLARED BANKRUPT UNTIL INTERVENTION ENDED AND/OR ALL STATE CREDITS OR GUARANTEES LIQUIDATED.

C. STATE CREDITS AND GUARANTEES HAVE FIRST CLAIM ON FIRM'S ASSETS. PRIORITY FOR REMAINING CREDITORS TO BE BASED ON "PRINCIPLES OF SOCIAL ORDER" WHICH LED TO INTERVENTION, AND ON DEFENSE OF SMALLER FIRMS AFFECTED BY DEBT SUSPENSIONS.

D. PERSONAL PROPERTY OF ANYONE SERVING IN "DIRECTIVE" CAPACITY SUSPECTED OF ACTIONS "GRAVELY DAMAGING TO INTERESTS OF FIR." CAN BE FROZEN OR SEIZED. LIABILITY EXTENDS TO SPOUSES AND TO CLOSE RELATIVES OR OTHERS SUSPECTED OF COMPLICITY.

E. TRANSFER OR MORTGAGING OF ANY GOODS OF FOLLOWING PROHIBITED:

- (1) PERSONS IN DIRECTIVE CAPACITY WHO WERE OR ARE ABOUT TO BE SUSPENDED DUE TO SUSPECTED "IRREGULARITIES";
- (2) FIRMS LINKED WITH ABOVE DIRECTORS, OR PART OF SAME GROUP OF COMPANIES, WHICH BENEFITTED "BEYOND REASONABLE LEVELS" FROM LOANS OR GUARANTEES;
- (3) STOCKHOLDERS WHO DUE TO DOMINATE POSITION OR CONTROL OF MANAGEMENT DELIBERATELY CAUSED ABOVE ACTS.

F. DISTRIBUTION OF DIVIDENDS OR PROFITS WITHOUT MINISTERIAL APPROVAL EXPRESSLY PROHIBITED. ANY "PRIVILEGES" IN STATUTES OF FIRM CAN BE SUSPENDED OR ANNULLED.

G. SEVERE PENALTIES FOR ABOVE VIOLATIONS EXTENDED TO ANYONE DELIBERATELY INVOLVED IN FABRICATION OF FALSE DEBTS, OR WHO BY RECEIPT OF MORE THAN HIS NORMAL SALARY LED FIRM INTO FINANCIAL DIFFICULTIES.

2. COMMENT: A. ACCORDING TO TEXT, DECREE IS ONLY TRANSITORY, TO BE FOLLOWED SOON BY BROADER MEASURE COVERING ALL PROBLEMS EVOKED BY INTERVENTION LAWS. BUT FOR MONTHS GOP HAS BEEN PROMISING "CLARIFICATION" OF CRITERIA FOR INTERVENTION, WHILE LIMITED OFFICIAL USE

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THIS DECREE HAS ONLY MADE CRITERIA EVEN VAGUER AND MORE OPEN-ENDED, CODIFIED ACTIONS WHICH HAVE ALREADY BEEN TAKEN ON AD HOC BASIS, AND ESTABLISH EX POST FACTO CRIMES AND PENALTIES.

B. OPEN-ENDED PROVISIONS FOR PROPERTY ATTACHMENTS APPEAR TO NEGATE WHOLE CONCEPT OF A LIMITED LIABILITY COMPANY. ALSO, LARGE GROUPS LINKED TO INTERVENED COMPANIES (LIKE BORGES AND CUF GROUPS) COULD HAVE THEIR FREEDOM OF ACTION SEVERELY LIMITED.

C. IT APPEARS CERTAIN THAT BOTH FOREIGN AND DOMESTIC FIRMS WILL (AND INDEED SHOULD) BE VERY RELUCTANT TO EXTEND CREDIT TO ANY BUSINESS WHICH APPEARS IN DANGER OF GOVERNMENT INTERVENTION. NUMBER OF FIRMS ALREADY INTERVENED IS OVER 120, WITH TOTAL RAPIDLY GROWING. IN SOME CASES (NOTABLY SOCIEDADE CENTRAL DE CERVEJAS) FIRM WAS NOT IN KNOWN FINANCIAL STRAITS AND INTERVENTION WAS DUE TO WORKER OCCUPATION. D. DECREE IS FURTHER REASON WHY FEW BUSINESSMEN WILL BELIEVE THAT GOVERNMENT REALLY INTENDS TO ESTABLISH FIRM RULES OF GAME GUARANTEEING THEM A CONTINUED ROLE.

3. PORTUGUESE TEXTS OF DECREES BEING POUCHED.
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